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H7(4)

JURISDICTION OF POLICE OFFICERS.

MEMO NO. 1,105.

Dated Lahore, 10th *March* 1871.

To

ALL DEPUTY INSPECTORS GENERAL OF POLICE.

The Inspector General publishes the accompanying correspondence for he information and guidance of Police Officers.

2. When offenders are arrested, charged with offences for which the ·lice may arrest without warrant, in a district other than that in which they ay lawfully be tried, it is the duty of the police to send them, if the offence is ·· ripe for trial, to the officer in charge of the Police Station in which the offence as committed, or in which the offence may be inquired into, for inquiry under hapter IX, Criminal Procedure Code. If, however, the witnesses are forthoming and the charge appears to be established, the accused persons should be ent in custody direct to the Magistrate having jurisdiction, with a brief ccount of what is known of the case.

3. In determining who is the Magistrate having jurisdiction, the venue ections 26 to 33 of the Criminal Procedure Code must be carefully borne in ind.

4. The Chief Court has declined to give an opinion whether the venue ections of the Code apply to enlarge the jurisdiction of Station House officers inquire into cases. Pending any judicial decision by the Chief Court on s point, the Inspector General directs that the views expressed in his No. 5 of the 27th January, to the Registrar, be acted on, with this exception, ., that Sections 28 (abetment) and 32 (being a thug) shall not be taken extend the jurisdiction of the police.

. 226, *dated 5th December* 1870, *from H. M. Plowden, Esquire, Offg. Government Advocate, Punjab, to Lieutenant Colonel J. W. Younghusband, C. S. I., Offg. Inspector General of Police, Punjab.*

SIR,—Your letter No. 2264, dated 6th August 1870, appears to me to e this question.—"What is the proper procedure on arrest by the police out warrant of a supposed offender in a district other than that in which offence was committed?"

2. Section 109 points out the procedure. "The Police officer who makes the arrest shall take or send the person arrested without unnecessary delay before the Magistrate who has jurisdiction, or to the officer in charge of a Police Station."

3. There does not seem to me to be any such distinction intended by the Code as is laid down in para. 5 of your letter. The Section points out an alternative course, and the key to the choice of procedure appears to me to lie in the words "without unnecessary delay," or, in other words, to depend upon the circumstances of each case.

4. In determining who is the Magistrate having jurisdiction in the case, the venue sections of the Code must, of course, be taken into consideration.

5. The words "the officer in charge of a Police Station," are susceptible of a double interpretation, *viz.*, either the Station House officer of the district where the offence was committed, or the Station House officer of the district where the person is arrested.

6. Should the case appear ripe for judicial enquiry, I think it would be the duty of the Police officer to take the arrested person to the Magistrate having jurisdiction. Should further enquiry appear necessary in the district where the offence was committed, the arrested person should be taken to the Station House officer of that district, who is competent, under Section 135, to hold an enquiry upon information preferred to him.

7. Again, cases may occur in which a preliminary enquiry by the Police in the district of arrest may be considered expedient.

8. The general rule as to preliminary Police enquiries is laid down in Section 133 and Section 135, *viz.*, that a Police officer shall enquire only into cognizable offences committed within the limits of his own station. Section 26 states a similar general rule as to Magisterial enquiries, that 'every offence shall be enquired into in the district in which it is committed.' The words "enquired into" are interpreted in Section 9 to include every proceeding, preliminary to trial, but in a chapter relating exclusively to Criminal Courts, they would appear not to include Police proceedings but only Magisterial proceedings.

9. I am, therefore, of opinion that this and the rest of the venue Sections do not extend to Police enquiry.

10. Section 133 in its latter portion qualifies the general rule as to preliminary Police enquiry, but I am of opinion, on careful consideration, only so far as to authorize enquiry by a Police officer into non-cognizable cases, on the express order of a Magistrate, and as to empower a Magistrate to pass such an order.

11. I am therefore reluctantly forced to the conclusion that the legislature has inadvertently omitted to provide for the third hypothetical case, and to hold that the Station House officer in Section 109 is the Station House officer of the district where the offence was committed.

12. I observe that the Inspector General of Police, Central Provinces, holds the Station House officer, spoken of in Section 109, to be the officer in whose jurisdiction the arrest takes place. It appears to me that, if that officer can hold no preliminary enquiry, to take an arrested person *out of his way* to him, merely in order to enable the directions of Section 160 to be complied with, would be an unnecessary delay, within the meaning of Section 109.

13. That Section will no doubt bear both interpretations, as it does not specify which Station House officer is intended, and if, by reason of any of the venue sections, jurisdiction is given to a Magistrate of the district of arrest, it may not be improper to send the arrested person through the Station House officer to the Magistrate, but inasmuch as he has no power to enquire (or assuming that he has, then only on the order of a Magistrate) in this case also, it appears to me that the arrested person should be conveyed at once to the Magistrate having jurisdiction.

14. Concisely stated, the omission in the Code appears to be this, that the jurisdiction of Police officers to hold a preliminary enquiry into cognizable offences has not been made equally extensive with the jurisdiction of Magistrates, that is to say, under certain circumstances, independent of the locality of the offence—and considerable inconvenience may be the consequence of this omission.

15. This could be avoided, to some extent, by putting a strained construction on Section 133 so as to authorize enquiry on a Magistrate's order, into cognizable offences committed beyond Station limits; but I am rather disposed to consider that there has been an oversight in framing the Code, than to put such a construction on this section in order to escape admitting this fact.

No. 375, *dated* 27*th January* 1871, *from Inspector General of Police, Punjab, to Registrar Chief Court, Punjab.*

I have the honor to forward a copy of an opinion by the Government Advocate, and beg you will solicit the Judges to give me instructions on the following point, as I have the misfortune to differ from Mr. Plowden in the reply to this particular question :—

Do the venue Sections of the Criminal Procedure Code apply to police inquiries or not ?

2. To show the importance of this matter as regards Police administration, I will first recapitulate the offences affected :—

(1) Where an act is done and a consequence follows, jurisdiction to inquire is given in both places.

(2) Abetment.

(3) Offences committed on a boundary.

(4) Offences against persons or property on a journey.

(5) Receiving stolen property.

(6) Concealment of a kidnapped person.

(7) Being a thug.

(8) Escape from custody.

In all these cases the jurisdiction is enlarged ; and as rapidity is essential to success, indeed its first attribute, I need not dilate on the disadvantage to the discovery of the truth that is caused by restricting the police to inquiry only in the place where the crime is perpetrated. Delay must occur by adopting such a procedure, and this consideration induces me to ask the Judges to give me a hearing, though of course necessity does not affect my argument.

3. Mr. Plowden holds that because Chapter II of the Criminal Procedure Code is headed " of the jurisdiction of the Criminal Courts," therefore the provisions of that Chapter cannot be considered to include police inquiries. With the greatest deference to his opinion, I am compelled to think otherwise, and for the reasons I proceed to state :—

4. The heading of a chapter may be considered as a preamble. This was held in the case of *Latham* v. *Lafone*, L. R. 2., Ex. 123. In the case of *Pattison* v. *Bankes* (Cowp. 543) it was laid down that " strong words in the enacting part of a Statute may extend it beyond the preamble." And again in

Crespigny v. *Wittenoom*, (4. T. R. 793) and *S. P. Lees* v. *Summersgill* (17 Ves. 508), that the preamble cannot control the enacting part. In *Kearns* v. *the Cordwainers Company* (5. Jur. N. S. 1216) the Judges held that it was a general rule in the construction of Statutes, that the preamble may extend, but cannot restrain the effect of an enacting clause.

5. Now all the venue sections speak of "enquiry" which is defined, by Section 9, to comprise every proceeding preliminary to trial. The question then arises, "is a police inquiry a proceeding preliminary to trial"? It certainly comes before and not after trial.

6. I think great light is thrown on this subject by considering the expression "stage of a judicial proceeding" used in explanation 3 of Section 193 of the Indian Penal Code. I feel I may refer to the Penal Code, as it contains the substantive Criminal Law to which the Procedure Code is adjective, to explain the other. Both may be said to be on the same subject—the Criminal Law. It has frequently been ruled that Statutes on the same subject must be construed together. (Anon. Lofft. 398). "If there are several Acts upon the same subject, they are to be taken together as forming one system, and as interpreting and enforcing each other."—*Rex* v. *Palmer* 1. Leach C. C. 352, 355; 2. East P. C. 893. "It is a rule that several Statutes on the same subject are to be read as *one* Statute." *McWilliam* v. *Adams*. I. Macq. H. L., Cas. 120. These decisions sanction my reading the Penal and Procedure Codes together. In the *Queen* v. *Soondur Putnaick*, (3. S. W. R., Cr. R. 59,) it was held that an inquiry by the police is a stage of judicial proceeding. This being so, it must be a proceeding preliminary to trial. It is therefore an enquiry within the enacting clauses of Chapter II.

No. 445, *dated* 21*st February* 1871, *from Officiating Registrar Chief Court, Punjab, to the Inspector General of Police, Punjab.*

With reference to the enquiry contained in your letter No. 375, dated 27th ultimo, I am directed to inform you that the Judges are of opinion that the question therein contained is not one which they can answer on a non-judicial reference.